

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

| | | |
|------------------------------|---|----------------------|
| UNITED STATES OF AMERICA, |) | |
| |) | |
| Plaintiff, |) | 8:08CV223 |
| |) | |
| v. |) | |
| |) | |
| \$69,040.00 IN UNITED STATES |) | MEMORANDUM AND ORDER |
| CURRENCY, |) | |
| |) | |
| Defendant. |) | |
| |) | |

Plaintiff has filed a motion for default judgment and decree of forfeiture against the defendant currency and claimant Paul Gonzalez, as well as any unknown claimants. Plaintiff relies on the clerk's entry of default on August 19, 2008, [filing 12](#).

Reviewing the file, it is not clear that the claimant, Paul Gonzalez, was properly served with notice. Adm. Rule G(4)(b)(iii) permits service of the required notice on "the attorney representing the potential claimant with respect to the seizure of the property or in a related investigation, administrative forfeiture proceeding, or criminal case." The affidavit of plaintiff's counsel states that notice was sent to "Mr. W. Kevin Jackson, attorney for Paul Gonzalez," by certified mail. [Filing 11-2](#). Although counsel's affidavit refers to him as claimant's attorney, nothing in the case file indicates that W. Kevin Jackson served as claimant Gonzalez' attorney in such a proceeding or investigation.

More importantly, however, the Return of Service includes an attached Return Receipt from the certified mail which bears a signature that does not appear to be either "Paul Gonzalez" or "W. Kevin Jackson." Before a default judgment can be entered, it must be shown unequivocally that the claimant received proper

notice. While Adm. Rule G(4)(b)(iii) does permit additional means of providing notice on known claimants, none of those alternative means is shown to have been utilized in this case.

Thus, while the defendant property is plainly in default, the identified claimant is not. A supplemental showing by plaintiff will be necessary to demonstrate that proper service of notice on the claimant has been accomplished.

IT THEREFORE HEREBY IS ORDERED,

1. The clerk's entry of default, insofar as pertains to claimant Paul Gonzalez, [filing 12](#), is withdrawn and set aside.

2. Plaintiff is given twenty days from this date in which to file a supplemental showing demonstrating that claimant Paul Gonzalez has been properly served with notice of this action, in the absence of which the motion for default judgment will be denied.

DATED this 20th day of August, 2008.

BY THE COURT:

s/ *David L. Piester*

David L. Piester
United States Magistrate Judge